



Statement of Major Reservations to the Agreement in Principle

Trout Unlimited, Inc.

Trout Unlimited, Inc. recognizes the extraordinary effort of all stakeholders over the past several years to reach the current level of agreement in the Agreement in Principle. While we support most of the AIP with minor reservations, six sections contain terms about which we have major reservations due to vague, inconsistent or incomplete terms, or references to documents or sections missing or not yet confirmed. Therefore we sign the AIP as a "4", as we are able to "live with" the AIP with the following understandings:

Section 4 –

•4.1.1 and 4.1.3

..that the final Flow and Water Quality Implementation Plan will be acceptable to state and federal agencies in respect of their authorities under the Clean Water Act, the Endangered Species Act and the Federal Power Act and that since it will not be complete until the Section 401 Water Quality Certification is complete, that the recommended FWQIP included in the FA will not be binding on any parties to the Agreement.

•4.1.7

..that since the mitigation packages are not complete nor agreed by either state at this time, that the mitigation will meet each state's obligations and specifically that the terms for the conservation easements will be drafted to fulfill the purpose of conservation, public access and water quality protection.

•4.8

..that we have major reservations regarding the adequacy of the flows over the term of the license to provide for migratory fish that may be present in the river below Wylie dam in future years. Since at least two jurisdictional bodies have indicated the need to provide increases in future flows, it is essential to account for those now rather than have to amend, and possibly renegotiate or even terminate the FA after those flows are imposed. We support the attached proposal developed by Catawba-Wateree Relicensing Coalition to deal with this.

Section 10 –

•10.1.22

..that the appearance of two entities in this paragraph - licensee and Duke Energy - will be resolved so that it becomes clear that lands owned or controlled by Duke Energy will be available under the terms of the contract to be signed by licensee. We can only assume that Duke Energy will sign the contract in order to ensure that the lands are available. Otherwise the licensee is offering funding for land that might not be available.

..that since the time between purchase option date (12/06) and when funding support from Duke Energy is available may be substantial, we assume that in the case where Duke Energy owns the lands the option will be given without an escalation in purchase price, or the funding from licensee will be increased accordingly, or other suitable measures will be put in place. Again, the ability of licensee to bind Duke Energy and/or other businesses owned by Duke Energy will need to be clarified for this paragraph to be binding. (See attached letter filed with FERC by licensee April 5, 2006)

•10.2 – 10.22

..that clarification will be made as to whether the enhancements proposed to be constructed by third parties under AAll leases are intended to be obligations enforceable by the parties to the FA after the AAll leases are executed.

..that we have major reservations regarding the conditions precedent to many of the recreational enhancements. The licensee should be responsible for more of the needed enhancements whether or not an entity enters into an AAll lease. Otherwise there is too much risk that they will never be constructed.

•10.1.22;10.3.1; 10.3.2; 10.3.3; 10.3.4; 10.4.4; 10.10.3; 10.17.1; 10.21.5

..that since all these paragraphs contains references to binding Duke Energy to terms in the agreement, we can only assume that Duke Energy will be a signatory to the Agreement. (See attached letter filed with FERC by licensee April 5, 2006)

Section 11 –

•11.1.5

..that since specific plans for species protection are not yet presented that these plans will be acceptable to the agencies charged with such protection.

Section 13 –

•13.1.1 and 13.2.1

..that the FA will be amended to conform to water quality conditions imposed by the Clean Water Act and the water classifications established by the North Carolina Division of Water Quality, specifically those components, including temperature and dissolved oxygen, required to maintain the existing uses (i.e., natural trout propagation and survival of stocked trout) downstream of Bridgewater Station, and to conform with the "antidegradation policy" defined in the Act.

Section 14 –

14.2.1

..that if only one state's agency signs the FA, the signing state will still receive its contribution to the HEP.

Section 16 –

•16.5.3

..that ability for stakeholders to support or oppose fish passage prescriptions is intended to include any future "zone of passage" flow provisions required under the Endangered Species Act or under Section 18 of the Federal Power Act.

•16.2.2.5, 16.5.1, 16.5.2, 16.7.2.2

..that since many critical terms of the agreement are referred to but missing we will work toward drafting those to provide clear and fair provisions for amending the agreement, resolving disputes, withdrawing from it, terminating the agreement, among other things.

•16.10

..that the formula for escalating monetary values is acceptable to affected parties.

•16.7.2.3

..that since the mechanism for extending the Final Agreement Committee requires licensee's consent there will be provisions for dispute resolution in the event a majority that does not include the licensee votes to continue the FAC.

RE: Catawba-Wateree Hydroelectric Project Settlement Agreement to be filed with new license application

**POTENTIAL APPROACHES TO
TO MANAGE LIKELY INCONSISTENCIES BETWEEN FINAL AGREEMENT
TERMS AND MANDATORY LICENSE CONDITIONS**

Catawba-Wateree Relicensing Coalition

April 11, 2006

By letter dated February 23, 2006, the Catawba-Wateree Relicensing Coalition requested that Duke consider how best to manage the risk that the terms of the Final Settlement Agreement will be inconsistent with mandatory conditions likely to be imposed by agencies with jurisdictional authority. We now provide further details on two approaches to do this.

The conditions most likely to be inconsistent with the Final Agreement terms are fishway prescriptions issued by the US Fish and Wildlife Service and National Marine Fisheries Service under Federal Power Act section 18; reasonable and prudent measures or alternatives issued by the National Marine Fisheries Service for listed fish under Endangered Species Act section 7; and water quality certifications issued by North Carolina Department of Environment and Natural Resources and South Carolina Department of Health and Environmental Control.

The risk arises because of the sequence of negotiations and other actions in the relicensing proceeding. The Agreement in Principle will be signed by April 17, at a time when these agencies have not issued these conditions even in preliminary form. The Final Agreement (FA) will be signed in August which is also prior to the conditions being issued. If the signatories do not have a risk management strategy in place, the FA will not be durable or effective if inconsistent with those conditions, since FERC must incorporate mandatory conditions into a license. Most of the agencies with such authorities will not sign the AIP and thus will develop their conditions outside of the collaborative process which increases the risk. We are seeking approaches to work together to reduce that risk.

Most relicensing negotiations that include a settlement agreement have to deal with this same risk – signing a FA in advance of mandatory conditions, which specify minimum flow schedules or other flow provisions. There are successful approaches that have protected the interests of other licensees and stakeholders. Since minimum flow schedules and related flow provisions are the core of any relicensing agreement, it is most helpful when the agencies with mandatory authority are included in the collaborative process for negotiating the agreement and are willing to provide previews of their conditions. This way the terms of the FA can more likely be developed to be consistent

with those conditions. We think this may still be possible in our case, but even if not, the two sample approaches we offer should substantially reduce the risk. The first deals mostly with substantive provisions for flows and the second deals primarily with process.

We underscore that these approaches and the sample provisions are not intended to impose all the risk and all additional costs on the licensee. That may occur, but the approaches may also result in other changes that accommodate those additional costs. We strive to find a way to equitably share the risk.

Finally, these approaches are not necessarily mutually exclusive and an integration or combination of them may be the best solution.

APPROACH NUMBER 1

The signatories to the AIP will develop the terms for the Final Agreement to be consistent with the mandatory license conditions likely to be issued by jurisdictional bodies with mandatory authority.

Detail

After consultation with representatives from the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the S.C. Department of Health and Environmental Control we have determined that the following flow and water quality related provisions, if added to the Final Agreement, are likely to result in an agreement with terms that will more closely resemble and accommodate the conditions that will be imposed or recommended by those bodies than those in the current version of the Agreement in Principle (2/15/06).

While the above mentioned agencies have not agreed to the specific provisions we propose, the inclusion of these provisions in the Final Agreement will substantially reduce the risk of the agreement being subject to major renegotiation, being withdrawn from or terminated. This will inure to the benefit of all signatory Parties.

We have also consulted with the North Carolina Department of Environment and Natural Resources and the North Carolina Wildlife Resources Commission who are also likely to support most of these provisions.

In addition we have consulted with American Rivers and the Coastal Conservation League and have determined that the provisions we propose are far less likely to trigger a legal challenge than those in the current Agreement in Principle. In fact, we think that both these organizations would be more likely to sign the settlement agreement if these provisions are included.

Except for the increased flows below Oxford dam where we have provided alternatives to increasing the flows, we have analyzed the impacts of the other flows using the Santee

River Basin model. This analysis indicates that these flows will not result in any substantial negative impacts on drought management, or system flow requirements.

We strongly urge Duke Energy to modify its water supply model (CHEOPS) so that it is capable of testing these scenarios and either verify or contradict our results. An earlier analysis of a similar flow proposal performed by Duke's consultant, Devine Tarbell and Associates using the CHEOPS model did not accurately model the flows proposed since CHEOPS' current configuration does not allow it to replicate the effects of discontinuing the flows if they would trigger Stage 0 of the Low Inflow Protocol, among other things.

In addition, a more accurate model run is needed to determine the effects of the proposed flows on power generation with regard to Duke Energy's duty to provide its customers with the lowest cost electricity available while complying with state and federal regulations and license terms.

Proposed changes to the minimum flow schedule and other flow provisions of the Agreement in Principle to be incorporated in the Final Agreement:

1. Oxford Development

a) Flows below Oxford dam will be increased to provide 50% of the habitat for the native fish community that would be expected under an unregulated flow regime. These flows would fall in the 475 – 655 cfs range. These flows would only be provided during “wet” or “normal” years and would be suspended any time that their provision would trigger a stage “0” of the Low Inflow Protocol. We understand that earlier modeling of increased flows produced impacts to the water level at Lake James that were unacceptable to some stakeholders. However, we request additional modeling be conducted to understand the impacts on lake levels if these flows were only provided as outlined above.

b) First alternative to this provision:

In the alternative, if these flows are not provided as indicated above, then adequate in-kind mitigation will be provided by increasing flows in the Catawba Bypass or below Bridgewater dam to improve habitat values in those reaches of the river.

c) Second alternative:

If neither the increased flows in the Oxford reach are provided, nor alternative mitigation flows are provided, then the licensee will provide the following mitigation in Catawba County: 100 foot conservation easements along both sides of the North and South Forks of Mountain Creek for a distance of approximately $\frac{3}{4}$ mile; and/or 100 foot conservation easement below Riverbend Park continuing for approximately 1.5 miles to coincide with the river trail; and/or conservation easement along existing gameland properties at Hudson Chapel Road along approximately 1.2 miles of riverfront.

2. Wylie Development

Beginning in the year 2024 flows below the Wylie dam will be increased to 2600 cubic feet per second from March 1 through May 15, but only if the diadromous fish (e.g. American shad, or short-nosed sturgeon, or blueback herring) are present in that reach of the Catawba River; and only if the Low Inflow Protocol is not in effect; and with the provision that these flows will be suspended if providing them would trigger entry to stage 0 of the Low Inflow Protocol.

If no diadromous fish are present in the reach by 2024, then the U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the appropriate state resource agencies will meet to determine how long to delay the provision of these flows. Since one migratory species, striped bass, are already in the reach, their presence alone is insufficient to warrant provision of these increased flows.

It is anticipated that the new flows will be provided via a new flow runner with a range of 700 – 1300 cfs used in combination with existing equipment. At licensee’s option, the flows may be decreased to 2200 cfs since the flow studies indicated that amount to be adequate. We are proposing 2600 cfs because it appears that would be least costly for the licensee to provide based on existing equipment and any modifications needed.

The table below indicates the flows to be provided:

Month	Minimum Continuous Flows (cfs)		Critical Flows (cfs)
	First 15 years of New License	Years 16+	
Jan	1,100	1,100	700
Feb-15 ¹	1,100	1,100	700
Mar ¹	1,100	2,600 ²	700
Apr ¹	1,100	2,600 ²	700
May-15 ¹	1,100	2,600 ²	700
Jun-15	1,100	1,300 ²	700
Jul	1,100	1,100	700
Aug	1,100	1,100	700
Sep	1,100	1,100	700
Oct	1,100	1,100	700
Nov	1,100	1,100	700
Dec	1,100	1,100	700

- Note 1: The Wylie High Inflow Protocol will be used during certain times to provide Minimum Continuous Flow of 1,300 cfs.
- Note 2: Diadromous flows begin in Year 2024. Beginning in year 2024, the Wylie Development will be operated such that Minimum Continuous Flow is provided as described in the table above unless the LIP is in effect or Stage 0 of the LIP would be entered because of diadromous flows. In the latter case flow requirements would drop to 1100 cfs to avoid entering into Stage 0.

3. Wateree Development

In order to provide adequate spawning habitat for shortnosed sturgeon, an endangered species, below the Wateree dam, flows through the bypassed reach will need to be provided. These flows will not be in addition to flows already provisionally agreed in the Agreement in Principle, but will be a re-routing of those flows through the channel. This could be accomplished by routing water that has already been used to generate electricity with the existing turbines through a channel leading to the bypassed reach, or via a new small turbine proximate to the affected area. Given that dam modifications for flood management may also be needed, we would strongly encourage Duke to consider innovative engineering solutions that will meet the multiple needs related to power generation, safety and habitat enhancement.

4. Provisions related to Conditions for Water Quality Certification

In order to accommodate the likelihood that one or both of the state water quality agencies acting under their authority and obligations pursuant to Section 401 of the Clean Water Act, will impose conditions inconsistent with the terms of the FA, the following provisions should be added to the FA:

a). Prior to imposition of conditions pursuant to water quality certification and issuance of the license, the signatories will convene to discuss the draft conditions when provided by the state water quality certifying agency. If all signatories agree to support the draft conditions then the FA will be amended to conform to those conditions pending their final imposition and issuance of the new license. If the draft conditions seek to impose flow requirements that are materially inconsistent with those in the FA, then the signatories will also determine whether additional amendments or alternations of the FA are needed in order to balance the flow needs of the Project. If any Party cannot agree to support the draft conditions, or cannot agree to additional alterations to the FA that are deemed necessary by the Licensee in order to meet the new flow conditions, then the Parties will enter a non-binding dispute resolution process. If the disagreement(s) are not resolved through this process, then any signatory may publicly support or oppose the draft conditions and shall not be bound by any terms in the FA that prohibit supporting conditions pursuant to water quality certification that are inconsistent with the FA.

b). Upon issuance of final conditions required for water quality certification, and the final FERC order that includes those conditions (and after completion of any legal challenges or requests for rehearing), the signatories shall meet to evaluate those conditions. Any and all conditions imposed that do not substantially affect the flow regime agreed in the FA shall be incorporated into the FA which shall be amended to conform to these conditions without renegotiation, reduction, alteration, or elimination of any other terms of the FA, except that the signatories may determine by consensus that additional alterations or amendments to the FA would be desirable in order to accommodate any new conditions imposed pursuant to the water quality certification. If the conditions imposed pursuant to the water quality certification include an alteration in flows that substantially affects the availability or use of water for recreational, habitat, lake levels or other project flow requirements, then the signatories will determine

whether the FA needs to be amended with regard to these flows in order to meet the conditions of the newly imposed flow conditions. Any changes to the FA must maintain an equitable balance among all flow needs in the project. In the event that the Licensee and the signatories cannot unanimously agree on the alterations or amendments to the entire flow regime that are needed in order to meet the newly imposed conditions, then the signatories shall participate in a non-binding dispute resolution process to try and resolve the disagreement(s). If the disagreement(s) are not resolved through this process then any signatory, including the Licensee may elect to initiate withdrawal procedures which shall be detailed in the FA.

If the licensee challenges the final conditions for the water quality certification, or requests rehearing of a FERC order that includes such conditions, the signatories shall not be under any obligation to join such challenge or rehearing request, but no signatory may oppose such challenge or rehearing request.

Nothing in this paragraph (b) shall preclude signatories from continuing to meet to try and reconcile differences between conditions imposed for water quality certification and the FA throughout the process or during any legal challenges or hearings.

APPROACH NUMBER 2

Draft cooperative procedures for amending the Final Agreement to conform to imposed mandatory conditions after execution of the Agreement, for dispute resolution, for withdrawal, or for termination that are fair and equitable among the Parties.

Detail

We propose the following basic steps to assist the Parties to the agreement in using their best efforts to reconcile any differences between the terms of the FA and conditions that may be imposed by jurisdictional bodies such as the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), either states' water quality certifying agency under Section 401 of the Clean Water Act, or the Federal Energy Regulatory Commission.

The purpose of these steps is to avoid unnecessary delays or litigation and to encourage the durability and effectiveness of the Final Agreement. We strongly recommend that active consultation with the USFWS, NMFS and state agencies take place to gain a better understanding of the actions they are considering and be able to anticipate subsequent recommendations, prescriptions and/or conditions. Since once the federal agencies act there is a presumption in favor of their recommendations, conditions and prescriptions, we strongly encourage keeping them "at the table" and fostering open communication with a commitment to find mutually acceptable solutions.

The following procedure is to be followed only with regard to actions of jurisdictional bodies that address issues that are unresolved in the FA . Those issues are limited to:

1. Fishways prescriptions under Section 18 of the Federal Power Act.
These prescriptions are limited to physical structures, facilities or devices and to project operations and measures related to such structures, facilities or devices which are necessary to ensure their effectiveness;
2. Flow requirements that become a condition for water quality certification under Section 401 of the Clean Water Act;
3. Modifications to project operations and equipment necessary to meet conditions under Section 401 of the Clean Water Act;
4. Fishways or flow requirements necessary under the Endangered Species Act.

Since these are issues that are not resolved in the FA, and are therefore not part of the agreement, any Party may choose to support or oppose draft conditions or mandatory actions imposed without violating their obligation to support the terms of the FA provided they have first met with the other Parties and have attempted to reconcile the draft mandatory actions with the FA and have participated in non-binding dispute resolution procedures if a consensus on reconciliation was not achieved.

Recommended Reconciliation Procedure:

Upon issuance of any preliminary draft recommendations, prescriptions or conditions under Sections 18 and 10(j) of the Federal Power Act, per any state’s water quality certification process, or the draft biological opinion under the Endangered Species Act, the Parties to the FA will:

a) Evaluate the consistency of the draft actions with the FA. If the Parties find that the actions are not materially inconsistent with the FA or if they agree that no changes are needed to the existing terms of FA in order to incorporate the proposed actions, then the Parties will notify the jurisdictional body who proposed the draft actions of the outcome of the evaluation. If the final action is consistent with the draft actions, then the Parties will amend the FA to incorporate the final action without amending any of the original terms of the Agreement.

b) If any Party finds the draft actions inconsistent with the FA , then that Party will explain why the action is inconsistent and propose alternative(s) that will result in the jurisdictional body’s ability to meet its statutory obligations while remaining consistent with the FA. Any alternatives or comments regarding the draft actions will also be filed according to any formal notice procedures pursuant to the licensing process.

The Parties, including the jurisdictional body, will meet and discuss the alternatives and use their best efforts to reconcile any differences and find an alternative solution that can be incorporated into the FA. The outcome of these discussions will be submitted to the agency or body proposing the draft action.

If the jurisdictional body determines that none of the proposed alternatives will meet its statutory obligations, and if any signatory Party cannot accept including the draft action without amending existing terms of the FA, then the next steps will be followed.

c) The Parties to the agreement will meet to discuss amending the existing terms of the FA in order to accommodate the proposed mandatory action. The Parties will agree to use their best efforts to amend the FA in a way that is least disruptive to the balance of interests in the entire agreement. If the Parties are unable to reach agreement in finding the way to amend the FA that causes the least disruption to the negotiated balance of interests reflected in the entire agreement, then the Parties will enter non-binding dispute resolution. (Sample of Dispute Resolution Procedures below)

d) During this period of discussion, negotiation and dispute resolution, the Parties will not be deemed to have waived any legal remedies that are appropriate and may pursue them. However, all Parties agree to refrain from tactics that are designed to interfere with a constructive intent to resolve the issues and reconcile the draft conditions with the FA.

e) Once any final mandatory actions that are inconsistent with the FA have been issued including the conditions, prescriptions or recommendations to be imposed, then any Party objecting to such action may initiate the process to withdraw from the FA. The Party may initiate withdrawal proceedings only if it has complied with the required dispute resolution procedures to attempt to resolve the objection, and that Party does not file for appeal. If the Party files an appeal to resolve the inconsistency, that Party may not withdraw until its appeal is exhausted.

Sample Dispute Resolution

This sample provision directs the FA signatories to resolve disputes related to consistency of the FA with mandatory conditions.

1. **General Applicability** All disputes among the Parties regarding any Party's performance or compliance with this Settlement Agreement, including resolution of any disputes related to any provision of the New Project License, Final Mandatory Terms and Conditions, Section 401 Certification, Permits related to the New Project License, or other mandatory license condition that is Inconsistent with the Settlement, shall be the subject to the dispute resolution process provided in this Section XX, unless otherwise specifically provided in this Settlement Agreement. The Parties agree that disputes shall be brought in a prompt and timely manner.

2. **General Obligations**. The Disputing Parties shall devote such resources as are needed and as can be reasonably provided to resolve the dispute expeditiously. The Disputing Parties shall cooperate in good faith to promptly schedule, attend and participate in the dispute resolution. Unless otherwise agreed among the Disputing Parties, each Disputing Party shall bear its own costs for its participation in this or any administrative dispute resolution process related to the Settlement Agreement. Each Disputing Party shall promptly implement any resolution of the dispute.

3. **Related Proceedings**. The dispute resolution process in this Section does not preclude any Party from timely filing and pursuing an action for administrative or judicial

relief of any FERC order, compliance matter, or other regulatory action related to the New Project License; provided that any such Party shall pursue dispute resolution pursuant to this process as soon as practicable thereafter or concurrently therewith. The Party initiating a dispute under this Section shall notify FERC when dispute resolution proceedings are initiated relevant to an issue related to the New Project License. The Parties acknowledge that the initiation of dispute resolution proceedings shall have no effect on filing deadlines or applicable statutes of limitation before FERC.

4. **Process**

4.1. **Dispute Initiation Notice** A Party claiming a dispute shall give Notice of the dispute. If the dispute includes a claim that the New Project License, or any preliminary or final condition thereof, is Inconsistent with this Settlement Agreement, the Notice shall be issued within the applicable time periods specified in Section XX. Such Notice shall describe: (A) the matter(s) in dispute, (B) the identity of any other Party alleged to have not performed an obligation provided by the Settlement Agreement, and (C) the specific relief sought. The Parties agree that disputes shall be brought in a prompt and timely manner.

4.2. **Informal Meetings** The Disputing Parties shall hold at least two informal meetings to resolve the dispute, commencing within 30 days after the Dispute Initiation Notice.

4.3. **Mediation**. If the informal meetings do not resolve the dispute, the Disputing Parties shall decide whether to use a neutral mediator, such as FERC's Office of Dispute Resolution Services. The decision whether to pursue mediation shall be made within 20 days after conclusion of the informal meetings. The Disputing Parties shall agree on an appropriate allocation of any costs of the mediator employed under this section. Mediation shall not occur if the Disputing Parties cannot agree on the allocation of costs. The Disputing Parties shall select a mediator within 30 days of the decision to pursue mediation, including the agreement of allocation of costs. The mediation process shall be concluded not later than 60 days after the mediator is selected. The above time periods may be shortened or lengthened upon mutual agreement of the Disputing Parties.

1.4 **Dispute Resolution Notice** The Disputing Parties shall provide Notice of any resolution of the dispute achieved under Sections 4.1-4.3. The Notice shall: (A) restate the disputed matter, as initially described in the Dispute Initiation Notice; (B) describe the alternatives which the Disputing Parties considered for resolution; (C) state whether resolution was achieved, in whole or part, and state the specific relief agreed-to as part of the resolution.

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April 5, 2006

VIA MESSENGER

Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E., Room 1A
Washington, D.C. 20426

FILED
OFFICE OF THE
SECRETARY
2006 APR -5 P 12
2006 Apr 5

Re: **Notification Of Change In Name of Licensee For Project Nos. 2601, 2602, 2603, 2619, 2686, 2692, 2694, 2698, 2232, 2331, 2332, 2503, and 2740**

Dear Secretary Salas:

The purpose of this letter is to notify the Commission that the name of the licensee for the above-referenced projects changed from Duke Energy Corporation to Duke Power Company LLC, effective April 3, 2006, the date the Duke Energy Corporation - Cinergy Corporation merger closed. Accordingly, the Commission should change its records, and issue appropriate orders amending the licenses for the projects, to reflect this change in the name of the licensee.

Background

Duke Power Company was the original owner and licensee of the Catawba-Wataree Project No. 2232, the Ninety-Nine Islands Project No. 2331, the Gaston Shoals Project No. 2232, the Keowee-Toxaway Project No. 2503, and the Bad Creek Pumped Storage Project No. 2740. In 1997, Duke Power Company changed its name to Duke Energy Corporation. This name change was brought to the Commission's attention, and in orders issued in August 1997,¹ the Commission amended the licenses for these five projects to reflect the name change and, at Duke Energy Corporation's request, used as the licensee name the business name Duke Energy Corporation had chosen to use for operation of these projects ("Duke Power, a division of Duke Energy Corporation").

¹ See, e.g., 80 FERC ¶ 62,125 (1997).

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Honorable Magalie R. Salas

April 5, 2006

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Nantahala Power and Light Company ("Nantahala") was the original owner and licensee of the Bryson Project No. 2601, the Dillsboro Project No. 2602, the Franklin Project No. 2603, the Mission Project No. 2619, the West Fork Project No. 2686, the Nantahala Project No. 2692, the Queens Creek Project No. 2694, and the East Fork Project No. 2698. By order issued August 10, 2001 (96 FERC ¶ 62,142), the Commission approved the transfer of these eight licenses from Nantahala to Duke Energy Corporation and, at Duke Energy Corporation's request, used as the licensee name the business name Duke Energy Corporation had chosen to use for operation of these projects ("Duke Power, a division of Duke Energy Corporation, Nantahala Area").

Because the above-referenced business names were not separate corporate entities but just divisions within Duke Energy Corporation, the actual owner and licensee of the 13 projects was Duke Energy Corporation.

The Duke Energy Corporation- Cinergy Corporation Merger

Last year Duke Energy Corporation and the Cinergy Corporation ("Cinergy") entered into an agreement to merge their businesses. As discussed in more detail in the Commission's December 20, 2005 order under § 203 of the Federal Power Act authorizing the merger (113 FERC ¶ 61,297 at ¶ 12), in furtherance of the merger Duke Energy Corporation formed Duke Energy Holding Corporation ("Duke Holding"). As part of the merger, Duke Energy Corporation became a subsidiary of Duke Holding, Duke Holding was renamed "Duke Energy Corporation," and the "old" Duke Energy Corporation was converted into a North Carolina limited liability company and renamed "Duke Power Company LLC."² The merger closed on April 3, 2006; accordingly, the conversion into, and the change in name from the "old" Duke Energy Corporation to, "Duke Power Company LLC" occurred on that date.

² Under North Carolina law, the conversion of a North Carolina corporation such as Duke Energy Corporation into a North Carolina limited liability company does not constitute the dissolution or termination of the converting entity; rather, the converting entity continues in existence as the resulting limited liability company, and title to all real estate and other property held by the converting entity continues vested in the resulting limited liability company without reversion or impairment. See North Carolina Business Corporation Act, N.C.G.S. § 55-11A-13(a); North Carolina Limited Liability Company Act, N.C.G.S. § 57C-9A-04. Thus, the conversion will not result in any new, separate legal entity holding the licenses or controlling interests in project property. It should be noted that the Commission has addressed such conversion situations in the past. Specifically, by order issued February 2, 1999 (86 FERC ¶ 62,088), the Commission changed the names of two co-licensees of the Bear Swamp Project No. 2669 in response to the co-licensees' letter filed December 7, 1998, notifying the Commission of the name change resulting from a similar conversion.

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Honorable Magalie R. Salas
April 5, 2006
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Accordingly, Duke Power Company LLC respectfully requests that the Commission change its records, and issue appropriate orders amending the licenses for Project Nos. 2601, 2602, 2603, 2619, 2686, 2692, 2694, 2698, 2232, 2331, 2332, 2503, and 2740, to reflect that the name of the licensee for these 13 projects has changed to "Duke Power Company LLC."

Please feel free to contact me if you have any questions regarding this matter.

Sincerely,


John A. Whittaker, IV
ATTORNEY FOR DUKE POWER COMPANY LLC

cc: Garry Rice
Karol Mack
Jeff Lineberger
Mary Vasile
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Carol Goosby